

DEPARTMENT OF INDUSTRIAL RELATIONS

OFFICE OF THE DIRECTOR

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San Francisco, CA 94102

(415) 703-5050



May 31, 2000

Jim Aja, Administrator
Foundation for Fair Contracting
3807 Pasadena Avenue, Suite 150
Sacramento, CA 95821

Re: Public Works Case No. 2000-036
Carlson Property Site Lead Affected Soil Removal and
Disposal Project

Dear Mr. Aja:

This constitutes the determination of the Director of Industrial Relations regarding coverage of the above-referenced project under California's prevailing wage laws and is made pursuant to Title 8, California Code of Regulations, section 16001(a). Based on my review of the facts of this case and an analysis of the applicable law, it is my determination that the removal, transport and disposal of approximately 8,000 cubic yards of lead-contaminated soil and other related work at the Carlson Property site, as more fully described in the bid solicitation by the Department of Toxic Substances Control (DTSC), is a public work subject to the payment of prevailing wages.

According to the documents submitted with your letter of May 25, 2000, DTSC has solicited bids for the removal of lead-contaminated soil at the Carlson Property site located in Richmond, California. The scope of work includes: (1) excavation and disposal of 25,000 square feet of reinforced concrete foundation pad; (2) excavation, transportation and disposal of approximately 8,000 cubic yards of lead-contaminated soil into a permitted disposal facility; (3) removal and disposal of a single tree; (4) importing, placing, compacting and grading of clean fill at the site; (5) hydroseeding; (6) installing an impermeable membrane at the vertical face of excavation; and (7) designing and installing temporary shoring.

Under the terms of the proposed contract, the DTSC will pay a lump sum figure for the excavation and other related work. The transportation and disposal work is to be paid based on fixed unit prices.

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Labor Code section 1720(a)¹ generally defines "public work" to mean: "Construction, alteration, demolition or repair work done under contract and paid for in whole or in part out of public funds...."

The proposed work will be performed under contract and paid for with public funds. The excavation and removal of the concrete, the lead-contaminated soil and the tree is a public work under section 1720(a) because this work is considered demolition and alteration of land. It does not matter whether the alteration takes place above or below the surface of the land (Priest v. Housing Authority (1969) 275 Cal.App.2d 751, 756).² For these same reasons, the import,³ placement, compaction and grading of the clean fill, hydroseeding, installation of the membrane and the building of the temporary shoring are also covered under section 1720(a).

In addition, the removal or hauling of these materials from the Carlson Property public works site is covered work under section 1720.3. Section 1720.3 states: "... 'public work' also means the hauling of refuse from a public work site...." Refuse is defined as "the worthless or useless part of something" (Webster's Third New International Dictionary (3d ed. 1967) p. 1910). The contaminated soil and concrete fall within this definition of refuse.

It appears from the documents you submitted, DTSC has advised potential bidders that prevailing wages do not need to be paid because the material to be removed is located on private land and therefore is not a public work as defined under Public Contracts Code section 1101. Unfortunately, DTSC's representation is incorrect.

First, only the Labor Code, particularly sections 1720(a) et seq., define what is and what is not a public work (see Lusardi Construction Company v. Aubry (1992) 1 Cal.4th 976). The Public

¹ All subsequent statutory references are to the Labor Code.

² See also Precedential Public Works Case No. 93-034, SAMTRANS-BART (Colma BART Station), dated November 3, 1993.

³ Unless supplied by material suppliers, the importing of clean fill is also covered work under section 1772, which states, "Workers employed by contractors or subcontractors in the execution of any contract for public work are deemed to be employed upon public work." (Sansone v. Dept. of Transportation (1976) 55 Cal.App.3d 434, 127 Cal.Rptr. 799.)


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Contracts Code has no application when making a determination whether prevailing wages are to be paid on a particular project.

Second, whether a project is a public work for which prevailing wages must be paid is not determined by whether the work is performed on private or public land. There is no reference to private versus public land in the Labor Code. It only requires a finding that construction or alteration, done under contract, is being paid for out of public funds. As noted above, the scope of work set forth in DTSC's solicitation for bids satisfies these three elements.

I hope this determination satisfies your inquiry.

Sincerely,

A handwritten signature in cursive script, reading "Stephen J. Smith".

Stephen J. Smith
Director